availed himself of the opportunity to be heard on the contemplated dismissal.

Lastly, it is clear from a perusal of the record of the evidence and the statements before the committee of inquiry that the plaintiff did not avail himself of the opportunity to make representations on the question of punishment and it is not alleged that there was any refusal on the part of the committee of inquiry to hear him on the question of punishment. It follows, in my judgment, on the pleadings, on the arguments put forward on behalf of the plaintiff by his counsel and on the facts that the committee of inquiry did not fail to give nor did it deny the plaintiff the right to make representations on the question of punishment."

By a respondent's notice, it was contended that the respondent was denied the opportunity to have examined before the Committee Supt. Ng Leng Hua, a material witness for the respondent, contrary to Regulation 4(6) of the Regulations. At the trial, the respondent had alleged that the respondent had applied for an adjournment to call Supt. Ng Leng Hua. The learned trial Judge on the evidence properly found that no such application for an adjournment was made. Before us, it was argued that the Committee should have adjourned on its own motion. There is no merit at all in the contention.

We accordingly allowed the appeal with costs here and below. The judgment below was set aside.

Appeal Allowed.

Solicitors: *J.B. Jeyaretnam & Co.*

THE "KOTA PAHLAWAN"; "KOTA PAHLAWAN", OWNERS OF SHIP v. "KOTA PAHLAWAN", OWNERS OF CARGO

[C.A. (Wee Chong Jin C.J., Lai Kew Chai & Chua JJ.) May 13, 1982]

[Singapore — Civil Appeal No. 64 of 1981]

Practice and Procedure — Admiralty action — Action in rem — Leave to amend — Indorsement of plaintiffs' address — Court must be satisfied that mistake was genuine — Rules of the Supreme Court 1970, O. 20 r. 5(2) & (3).

Shipping Law — Action in rem — Contract of carriage by sea — Proper party to sue — Consignees and not shippers to sue — Bills of Lading Act, 1855.

On May 11, 1981, the learned Assistant Registrar granted leave to the plaintiffs/respondents to amend the indorsement of address of the plaintiffs/respondents in the Writ of Summons. An appeal against the decision of the learned Assistant Registrar to the Judge in chambers was dismissed (see [1982] 1 M.L.J. 13). The defendants/appellants appealed against the learned Judge's decision.

Held, allowing the appeal: (1) the shipper could not recover from the carrier damages in cases of carriage of goods by sea where the contract contemplated that the carrier would also enter into separate bill of lading contracts with whoever might become the owners of the goods and the indorsees of the Bills of Lading. Hence, in the present case, the shippers could not have sued the appellants;

(2) to allow an amendment, even if the effect is to substitute a new party after the expiry of any relevant period of limitation, it must be shown that the mistake sought to be corrected was a genuine mistake and was either not misleading or not such as to cause any reasonable doubt as to the identity of a plaintiff or a defendant; in the present case the respondents conceded that they had not brought themselves within Order 20 r. 5(2) & (3).

Cases referred to:-

(1) *The Albazero* [1977] A.C. 774.

(2) *Dunlop* v. *Lambert* (1839) 6 Cl & F. 600.

Per curiam: *Dunlop* v. *Lambert* no longer good law in light of the *Albazero case.*

CIVIL APPEAL.

G. Pannirselvam (*Roop Parkash* with him) for the appellants.

K. Pillai Nirumalan (*K. Gopalan* with him) for the respondents.

Lai Kew Chai J. (delivering the judgment of the Court): This appeal concerns the circumstances under which an amendment to a writ may be allowed under Order 20 sub-rules 5(2) and 5(3) of the Rules of The Supreme Court, 1970 ("the Rules"), which read as follows: —

"5(2). Where an application to the court for leave to make the amendment mentioned in paragraph (3), (4) or (5) is made after any relevant period of limitation current at the date of issue of the writ has expired, the court may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.

5(3). An amendment to correct the name of a party may be allowed under paragraph (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or, as the case may be, intended to be sued."

On May 11, 1981 the learned Assistant Registrar granted leave to the respondents to amend the indorsement of the address of the respondents at page 3 of the Admiralty *in rem* Writ of Summons in the following manner: —

From:

"This writ was issued by Wu & Raja of No. 205 Colombo Court, Singapore, Solicitors for the said plaintiff(s) whose address is at 34 Lorong 32, Geylang Road, Singapore 14". ("the Singapore address")

To:

"This writ was issued by Wu & Raja of No. 205 Colombo Court, Singapore, Solicitors for the said plaintiff(s) whose address is at Jalan Sunan Ampel, No. 12, Jakarta, Indonesia, and is a partnership firm with limited liability and registered according to the laws of Indonesia" ("the Indonesian address").

An appeal against the decision of the learned Assistant Registrar to the judge in chambers was dismissed with costs. Against the decision of the learned judge this appeal was brought. At the conclusion of the hearing of the appeal before us, we allowed the appeal. We now give our reasons.

A brief chronology of a few vital dates and events is necessary to an understanding of the issues. As evidenced by a Bill of Lading numbered 2 and dated 6 January 1979 Universal Union Trading Co. Pte. Limited ("the Shippers") of the Singapore address shipped on board the appellants' vessel "Kota Pahlawan" 315 cases of automative spare parts for carriage from Singapore to Tanjong Priok/Jakarta, Indonesia. The goods were to be delivered to the order of The Chase Manhattan Bank N.A. or their order. As the goods were shipped out of Singapore the contract of carriage was subject to the Carriage of Goods by Sea Act, 1972 of Singapore. Under Article III Rule 6 of the Schedule

to the Act, the limitation period within which claims against the appellants must be brought was one year from the date of the delivery of the goods at the port of destination or the date on which the goods ought to have been delivered at the port of destination.

In the event, the vessel "Kota Pahlawan" arrived at Tanjong Priok on January 10, 1979. The Bill of Lading was endorsed to C. V. Agung ("the Consignees") of the Indonesian address who took delivery of the goods.

The period of limitation would have ended on January 9, 1980 but at the request of the Shippers the appellants agreed to extend the period of limitation to April 10, 1980. On April 10, 1980 an admiralty action *in rem* was commenced by "The Owners of the Cargo lately laden on board the ship or vessel 'Kota Pahlawan'" as "the plaintiffs". The Singapore address of the Shippers was given at page 3 of the Writ as the address of "the plaintiffs". The Writ was as prescribed in Form 155 and the disclosure of the plaintiffs' address was required by Order 6 sub-rule 4(1)(a) of the Rules. In the indorsement to the Writ, the plaintiffs as owners of the goods or as indorsees or holders of the Bill of Lading claimed against the appellants damages for breach of contract and/or breach of duty and/or negligence of the appellants, their servants or agents in respect of the damage and/or short delivery of 51 cases of the goods

On April 16, 1980 the Solicitors of the Shippers requested the appellants to provide a bank guarantee as security for their clients' claims. In consideration, the Shippers would refrain from arresting the vessel or any sister ship. They sent a draft of the bank guarantee in which the Shippers were named as the beneficiary. It was common ground that the bank guarantee was eventually issued in favour of the Shippers. The Consignees had not at all material times instituted any claims against the appellants in respect of the damage and/or short delivery of the goods.

The Writ of Summons was served on the appellants. As no appearance was entered, the respondents entered judgment against the appellants in default of appearance. The appellants applied to set aside the judgment on two grounds, namely, that the judgment was irregularly obtained and that the Shippers as the plaintiffs were neither the owners of the goods nor the indorsees or holders of the Bill of Lading and accordingly could not sue. In resisting the application, the respondents continued to maintain that the Shippers were the proper plaintiffs and the Shippers had an interest in the goods. Apparently, the effect of the decision of the House of Lords in *The Albazero*[1] was either unknown or not sufficiently appreciated. The default judgment was set aside.

We think that this was the stage when the issue was crystallised and it was realised by the Solicitors of the Shippers that the Shippers were not the proper party to sue either as owners of the goods or as indorsees or holders of the Bill of Lading in contract and/or in tort.

On April 21, 1981 the respondents applied to the learned Assistant Registrar for leave to make the amendments. Leave was granted. It emerged from the affidavit of Mr. K. Gopalan, the Solicitor for the respondents, that the respondents' Solicitors had informed the appellants that they were acting for Netherlands Insurance Company Est. 1845 Limited, the insurers of the goods who were described as the "real plaintiffs." Whatever that expression meant, it was still essential for the proper party to sue. No other grounds were given in support of the application to amend. Before the learned judge, the solicitors for the respondents admitted that they had made a mistake in the indorsement as to the address. The learned judge said:

> "The address, No. 34, Lorong 32, Geylang Road, Singapore 14, in the indorsement is the address of Universal Union. It is conceded that at the material time Universal Union were not the owners of the goods. The Solicitors for the plaintiffs admit that they had made an error in the endorsement as to address. But it is said that at the time when the writ was issued they did not have the address of the consignees. No explanation was given but I infer that the insurers who instructed the Solicitors did not at that time have that information or had not furnished it to their Solicitors.
>
> On these facts, for the plaintiffs, it was submitted that the description 'The Owners of the Cargo ...' gathers as plaintiffs all persons who have an interest in the cargo. When on the instructions of the insurers this subrogated action was commenced, the Shippers would be one of the persons interested in the cargo. Therefore the Solicitors were not to be faulted for having at that time given the address of Universal Union as the address of the plaintiffs in the indorsement."

We find it difficult to believe that the solicitors did not have the address of the Consignees at the time when the Writ was issued. One of the causes of action is in contract based on the Bill of Lading which the solicitors must have read. It is expressly stated in the Bill of Lading that the notifying party was "C.V. Agung, Jl. Sunan Ampel No. 12, Jakarta." As this was in effect a subrogated action, the claims under the insurance policy must have been made by the Consignees who had taken delivery of the goods in whose name the cargo policy was either taken as the assured or in whose favour the policy must have been eventually endorsed.

The learned judge with respect also erred in holding that the Shippers were "one of the persons interested in the goods." This was perhaps the legal position until *The Albazero* (*supra*) was decided by the House of Lords. It was decided in all the circumstances of that case, which are similar in all material respects to those in the present case, that the property in, and the right to possession of, the cargo had at the time of the loss passed from the consignors/plaintiffs to the indorsees of the Bill of Lading. For some 137 years prior to the decision of *The Albazero*, it was the rule in *Dunlop* v. *Lambert*[2] that a shipper who had privity of contract with a carrier could recover from the carrier substantial damages even though the property in the goods might be in the consignee. He could sue as the agent or trustee of the consignee. The House of Lords, however, expressed the view that the rationale behind the rule in *Dunlop* v. *Lambert* (*supra*) should no longer apply after the passing of the Bills of Lading Act, 1855 in cases of carriage of goods by sea where the contract contemplated that the carrier would also enter into separate bill of lading contracts with whoever might become the owners of the goods and the indorsees of the Bills of Lading. The decision in *The Albazero*, though not binding, is of high per-

suasive authority and it follows that the Shippers on the facts disclosed so far in this case could not have sued the appellants.

We turn to the contention that the description of the plaintiffs on the title of the writ and the indorsement, notwithstanding the indorsement of the Singapore address in page 3 of the writ, nevertheless referred to the Consignees, C.V. Agung. This submission is untenable. The plaintiffs' address given was the Singapore address, referring unequivocally to the Shippers. The bank guarantee was taken in the name of and for the benefit of the Shippers and for no other party. In the proceedings to set aside the default judgment, the respondents continued to claim that the Shippers were referred to as the plaintiffs who had an interest in the goods.

We have to consider whether the respondents had brought their application within our discretion as set out in Order 20, sub-rules 5(2) and 5(3) of the Rules. These sub-rules were not considered in both hearings below. We have the discretion, but which must be exercised judicially, to allow an amendment even if the effect is to substitute a new party after the expiry of any relevant period of limitation. But it must be shown that the mistake sought to be corrected was a genuine mistake and was either not misleading or not such as to cause any reasonable doubt as to the identity of a plaintiff or a defendant. Counsel for the respondents conceded, quite properly, that the respondents had not brought themselves within the sub-rules. As we had stated earlier, we were not told exactly how genuine was the mistake and the circumstances it had occurred. The mistake and subsequent events in this case in fact led the appellants to believe that the Shippers were the plaintiffs.

We accordingly allowed the appeal with costs here and below.

Appeal Allowed.

Solicitors: *Drew & Napier; Wu & Rajah.*

THE "GREAT LOYALTY"; M.V. "OSWEGO MERCHANT", OWNERS OF v. M.V. "GREAT LOYALTY", OWNERS OF

[O.C.J. (Chua J.) May 5, 1982]

[Singapore — Admiralty In Rem No. 188 of 1974]

Shipping Law — Charter by demise — Who may sue — Whether "demise charterers" can be properly included in description "The owners".

Shipping Law — Maritime lien — Claim for damages as a result of collision — Whether maritime lien attached to vessel — High Court (Admiralty Jurisdiction) Act, (Cap. 6), ss. 3, 4(2) & (3).

The plaintiff's claim was for damages arising out of a collision on July 15, 1974, between their ship "Oswego Merchant" and the defendants' ship "Great Loyalty" in the Singapore Main Strait. As a result of the collison, the "Oswego Merchant" sustained damage and was repaired in Singapore.

On October 21, 1980, liability for the collision was by consent adjudged between the parties on the basis that the plaintiffs were 35% to blame and the defendants 65% to blame. A sum of S$4,590,333.92 and interest at 11% to run from January 1, 1975 was awarded by the Assistant Registrar. The defendants objected to the said decision as regards Items 15 and 18 of the plaintiffs' claim. Item 15 was for "Detention of vessel" amounting to S$1,235,749.59 and Item 18 was for "Crew's Wages" amounting to S$117,961.75.

The defendants claimed that Items 15 and 18 were not incurred by the plaintiffs at all and that they were items claimable, if at all, by the charterers of the "Oswego Merchant" and not by the plaintiffs and that the charterers were not parties to this action.

The main issue was whether the demise charterers were properly included in the description "The owners" as plaintiffs in the writ as held by the Assistant Registrar.

Held, dismissing the defendants' motion: (1) when damage or loss is caused to a vessel as a result of contributory negligence on both her part and that of another vessel, the existence of contributory negligence does not preclude the accrual of a maritime lien against the other vessel;

(2) there was a maritime lien attached to the "Great Loyalty" in respect of the damage done by her when she collided with the "Oswego Merchant" and consequently the jurisdiction of the court may be invoked in this action by virtue of section 4(3) of the High Court (Admiralty Jurisdiction) Act (Cap. 6).

(3) in a writ of summons in a collision action *in rem* if the plaintiffs are owners of the ship and are suing as such, it is usual to complete the line in heading against the word "plaintiffs" with the words "The Owners of the vessel "X" and not to name them. Their address, however, is required by O. 6 r. 4. This practice also permits several plaintiffs to sue collectively;

(4) in the present case, since the word "Owners" includes demise charterers when that word is used in connection with limitation of a shipowner's liability, demise charterers ought to be treated as owners for the purpose of maritime liens. The word "Owners" includes the demise charterers.

Cases referred to:-

(1) *The "Father Thames"* [1979] 2 Lloyd's Rep. 364.

(2) *The Ilos"* 166 E.R. 1040.

(3) *The "I Congresso"* [1977] 1 Lloyd's Rep. 536, 558.

ADMIRALTY IN REM.

D.H. Murphy (*K. Parasuram* with him) for the plaintiffs.

P. Selvadurai for the defendants.

Cur. Adv. Vult.

Chua J.: The plaintiffs' claim in this case is for damages arising out of a collision which occurred on July 15, 1974, between their ship "Oswego Merchant" and the defendants' ship "Great Loyalty" in the Singapore Main Strait. As a result of the collision, the "Oswego Merchant" sustained damage and was repaired in Singapore.

On October 21, 1980, liability for the collision was by consent adjudged between the parties on the basis of the plaintiffs being 35% to blame and the defendants being 65% to blame.

The assessment of damages was referred to the Assistant Registrar who awarded the sum of S$4,590,333.92 and an interest rate of 11% to run from January 1, 1975.

The defendants now by motion in objection apply to a judge in court to set aside the decision of the Assistant Registrar as to the damages in so far as the same relate to Items 15 and 18 of the plaintiffs' claim and to totally disallow those two items. Item 15 was for "Detention of vessel" amounting to S$1,235,749.59 and Item 18 was for "Crew's Wages" amounting to